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UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re:	)	Case No. 01-55137-wsj
	)	
SILICON VALLEY TELECOM	)	CHAPTER 11
EXCHANGE, LLC,	)	
	)	Date: April 29, 2011
Debtor.	)	Time: 9:30 a.m.
	)	Court: Hon. Arthur S. Weissbrodt
		280 S. First Street, Court #3022
		San Jose, CA 95112

**JOINT PRETRIAL STATEMENT**

Creditors Campeau Goodsell Smith ("CGS") and the Law Offices of David Tilem ("Tilem"), and reorganized debtor Silicon Valley Telecom Exchange LLC ("SVTX") hereby submit their joint pretrial statement, and respectfully represent as follows:

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SVTX cash basis profits” from SVTX/SVTIX income statements, while SVTX contends that “net proceeds” means “Balance Sheet cash balance” from SVTX/SVTIX balance sheet statements.

5. Since the commencement of quarterly distributions, SVTX and SVTIX has made the following distributions with respect to item (iii) quarterly payments:

- (a) for the calendar quarter ending December 2007, SVTX reported a Balance Sheet cash balance of \$161,597.18, and SVTIX reported a Balance Sheet cash balance of \$41,664.05. If SVTX and SVTIX had distributed 80% of those sums, SVTX and SVTIX would have paid \$129,277.74 and \$33,331.24 to creditors/CGS. Instead, SVTX paid nothing to creditors/CGS.
- (b) In February 2008, SVTX paid \$63,550.00 (check dated 2/15/08) and SVTIX paid \$23,718.00 (check dated 2/15/08) to CGS.
- (c) for the calendar quarter ending March 2008, SVTX reported a Balance Sheet cash balance of \$40,017.90, and SVTIX reported a Balance Sheet cash balance of \$85,072.39. If SVTX and SVTIX had distributed 80% of those sums, SVTX and SVTIX would have paid \$32,014.32 and \$68,057.91 to creditors/CGS. Instead, SVTX paid nothing to creditors/CGS.
- (d) for the calendar quarter ending June 2008, SVTX reported a Balance Sheet cash balance of \$62,347.51, and SVTIX reported a Balance Sheet cash balance of \$25,387.66. If SVTX and SVTIX had distributed 80% of those sums, SVTX and SVTIX would have paid \$49,878.00 and \$20,310.13 to creditors/CGS. Instead, SVTX paid nothing to creditors/CGS.
- (e) for the calendar quarter ending September 2008, SVTX reported a Balance Sheet cash balance of \$82,255.87, and SVTIX reported a Balance Sheet cash

1 balance of \$43,429.54. If SVTX and SVTIX had distributed 80% of those  
2 sums, SVTX and SVTIX would have paid \$65,804.70 and \$34,743.63 to  
3 creditors/CGS. Instead, SVTX paid nothing to creditors/CGS.

4 (f) for the calendar quarter ending December 2008, SVTX reported a Balance  
5 Sheet cash balance of (\$48,433.90), and SVTIX reported a Balance Sheet cash  
6 balance of (\$113,852.82) -- after deducting four checks dated 12/28/08 -  
7 12/30/08 and written to CGS consisting of SVTX checks for \$15,000.00 and  
8 \$34,000.00, and SVTIX checks for \$85,000.00 and \$85,000.00.

9 (g) for the calendar quarter ending March 2009, SVTX reported a Balance Sheet  
10 cash balance of \$98,195.83, and SVTIX reported a Balance Sheet cash balance  
11 of \$45,296.57. If SVTX and SVTIX had distributed 80% of those sums,  
12 SVTX and SVTIX would have paid \$78,556.66 and \$36,237.26 to  
13 creditors/CGS. Instead, SVTX paid nothing to creditors/CGS.

14 (h) for the calendar quarter ending June 2009, SVTX reported a Balance Sheet  
15 cash balance of \$32,223.79, and SVTIX reported a Balance Sheet cash balance  
16 of \$88,696.96. If SVTX and SVTIX had distributed 80% of those sums,  
17 SVTX and SVTIX would have paid \$25,779.03 and \$70,957.57 to creditors/  
18 CGS. Instead, SVTIX paid \$50,000.00 (check dated 7/14/09) to CGS.

19 (i) for the calendar quarter ending September 2009, SVTX reported a Balance  
20 Sheet cash balance of \$96,770.48, and SVTIX reported a Balance Sheet cash  
21 balance of \$13,476.00. If SVTX and SVTIX had distributed 80% of those  
22 sums, SVTX and SVTIX would have paid \$77,416.38 and \$10,780.80 to  
23 creditors/CGS. After CGS filed its motion to compel payments or  
24 receiver/trustee, SVTIX paid \$19,500.00 (check dated 10/30/09) to CGS.  
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- 1 (j) for the calendar quarter ending December 2009, SVTX reported a Balance  
2 Sheet cash balance of \$79,318.49, and SVTIX reported a Balance Sheet cash  
3 balance of (\$46,324.24) -- after deducting three checks dated 12/29/09 -  
4 12/30/09 and written to CGS consisting of an SVTX check for \$58,828.76 and  
5 SVTIX checks for \$109,167.03 and \$30,163.27.
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- 7 (k) for the calendar quarter ending March 2010, SVTX reported a Balance Sheet  
8 cash balance of \$17,167.26, and SVTIX reported a Balance Sheet cash balance  
9 of \$196,815.96. If SVTX and SVTIX had distributed 80% of those sums,  
10 SVTX and SVTIX would have paid \$13,733.81 and \$157,452.76 to  
11 creditors/CGS. Instead, SVTIX paid \$135,810.00 (check dated 4/07/10) to  
12 CGS. Subsequently, after objections raised by CGS and Tilem, SVTX paid an  
13 additional \$23,106.67 (check dated 5/19/10) to CGS.
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- 15 (l) for the calendar quarter ending June 2010, SVTX reported a Balance Sheet  
16 cash balance of \$596.14, and SVTIX reported a Balance Sheet cash balance of  
17 \$15,996.43. If SVTX and SVTIX had distributed 80% of those sums, SVTX  
18 and SVTIX would have paid \$476.91 and \$12,797.14 to creditors/CGS.  
19 SVTX paid \$476.91 (check dated 7/08/10) and SVTIX paid \$12,797.14 (check  
20 dated 7/8/10) to CGS.
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- 22 (m) for the calendar quarter ending September 2010, SVTX reported a Balance  
23 Sheet cash balance of \$4,240.01, and SVTIX reported a Balance Sheet cash  
24 balance of (\$2,856.87). If SVTX and SVTIX had distributed 80% of those  
25 sums, SVTX and SVTIX would have paid \$3,392.01 and \$ -0- to  
26 creditors/CGS. SVTX paid \$1,106.51 (check dated 10/10/10) to CGS.
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1 (n) for the calendar quarter ending December 2010, SVTX reported a Balance  
2 Sheet cash balance of \$6,582.52, and SVTIX reported a Balance Sheet cash  
3 balance of \$12,504.70. If SVTX and SVTIX had distributed 80% of those  
4 sums, SVTX and SVTIX would have paid \$5,266.02 and \$10,003.76 to  
5 creditors/CGS. SVTX paid \$5,266.02 (check dated 1/10/11) and SVTIX paid  
6 \$10,003.76 (check dated 1/10/11) to CGS.  
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8 (o) for the calendar quarter ending March 2011, SVTX reported a Balance Sheet  
9 cash balance of \$2,035.50 and SVTIX reported a Balance Sheet cash balance  
10 of \$13,517.93. If SVTX and SVTIX had distributed 80% of those sums,  
11 SVTX and SVTIX would have paid \$1,628.40 and \$10,814.34 to  
12 creditors/CGS. SVTX paid \$1,628.40 (check dated 4/2/11) and SVTIX paid  
13 \$10,806.34 (check dated 4/2/11) to CGS.  
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#### 15 **20% Building Reserve Account**

16 6. Until April 1, 2010, SVTX did not separately establish nor account for the  
17 20% Reserve Fund anticipated in the confirmed Plan. SVTX expended monies for building  
18 repairs, maintenance and improvements from its general bank accounts. Creditors CGS and  
19 Tilem are in disagreement with SVTX concerning the total sum expended from the Confirmation  
20 Date through the present, with creditors contending that such sum exceeds \$1,000,000. It is not  
21 disputed that prior to the May 2010 payment methodology agreement, SVTX expended funds  
22 without reference to the 20% Reserve Fund balance available to SVTX. It is not disputed that at  
23 no time prior to March 31, 2010, did CGS ever discuss with SVTX that SVTX should have a  
24 separate bank account for the 20% Reserve Account.  
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SVTX/SVTIX that have not been presented to SVTX/SVTIX's bank for payment even though the liability for payment on the check exists. SVTX contends that it is a Generally Accepted Accounting Principle (GAAP) that cash balances are based on "Balance Sheet cash balances."

11. SVTX contends that one of the events that precipitated the filing of SVTX's bankruptcy petition was SVTX's inability to pay expenses as they were incurred and that one such pre-petition expense was for the repair of a broken underground water pipe that cost in excess of \$124,000 to repair. SVTX contends that the purpose of distributing only 80% of the net proceeds to creditors was to enable SVTX/SVTIX to retain 20% of the net proceeds as a "reserve account" so that SVTX/SVTIX would have cash on hand to pay unplanned repairs whose cost exceeded SVTX/SVTIX's ability to pay from monthly revenues.

#### **80% Quarterly Distributions (Net Profits based)**

12. As set forth above, CGS and Tilem contend that "net proceeds" means "reported SVTX cash basis profits" from SVTX/SVTIX income statements rather than "Balance Sheet cash balance" from SVTX/SVTIX balance sheet statements. Restating the foregoing analysis based on "cash profits" would calculate as follows:

- (a) for the calendar quarter ending December 2007, SVTX reported Net Income of \$236,448.34, and SVTIX reported Net Income of \$23,718.25. If SVTX and SVTIX had distributed 80% of those sums, SVTX and SVTIX would have paid \$189,158.67 and \$18,974.60 to creditors/CGS.
- (b) In February 2008, SVTX paid \$63,550.00 (check dated 2/19/08) and SVTIX paid \$23,718.00 (check dated 2/19/08) to CGS.
- (c) for the calendar quarter ending March 2008, SVTX reported Net Income of (\$26,183.60), and SVTIX reported Net Income of \$39,648.86. If SVTX and SVTIX had distributed 80% of those sums, SVTX and SVTIX would have



1 paid \$ -0- and \$31,719.09 to creditors/CGS. Instead, SVTX paid nothing to  
2 creditors/CGS.

3 (d) for the calendar quarter ending June 2008, SVTX reported Net Income of  
4 \$112,773.20, and SVTIX reported Net Income of \$16,647.65. If SVTX and  
5 SVTIX had distributed 80% of those sums, SVTX and SVTIX would have  
6 paid \$90,218.56 and \$13,318.12 to creditors/CGS. Instead, SVTX paid  
7 nothing to creditors/CGS.

8 (e) for the calendar quarter ending September 2008, SVTX reported Net Income  
9 of \$176,941.72, and SVTIX reported Net Income of \$117,832.92. If SVTX and  
10 SVTIX had distributed 80% of those sums, SVTX and SVTIX would have  
11 paid \$141,553.37 and \$94,266.34 to creditors/CGS. Instead, SVTX paid  
12 nothing to creditors/CGS.

13 (f) for the calendar quarter ending December 2008, SVTX reported Net Income of  
14 (\$230,633.12), and SVTIX reported Net Income of (\$200,436.31) -- after  
15 deducting four checks dated 12/28/08 -12/30/08 and written to CGS consisting  
16 of SVTX checks for \$15,000.00 (delivered 1/15/09) and \$34,000.00 (delivered  
17 1/29/09), and SVTIX checks for \$85,000.00 (delivered 1/15/09), and  
18 \$85,000.00 (delivered 1/27/09) to CGS.

19 (g) for the calendar quarter ending March 2009, SVTX reported Net Income of  
20 \$149,813.82, and SVTIX reported Net Income of \$153,651.37. If SVTX and  
21 SVTIX had distributed 80% of those sums, SVTX and SVTIX would have  
22 paid \$119,851.05 and \$122,921.09 to creditors/CGS. Instead, SVTX paid  
23 nothing to creditors/CGS.

- 1 (h) for the calendar quarter ending June 2009, SVTX reported Net Income of  
2 \$20,671.85, and SVTIX reported Net Income of \$89,272.39. If SVTX and  
3 SVTIX had distributed 80% of those sums, SVTX and SVTIX would have  
4 paid \$16,537.48 and \$71,417.91 to creditors/CGS. Instead, SVTX paid  
5 \$50,000.00 (check dated 7/05/09) to CGS.  
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- 7 (i) for the calendar quarter ending September 2009, SVTX reported Net Income  
8 of \$77,381.63, and SVTIX reported Net Income of (\$36,978.60). If SVTX and  
9 SVTIX had distributed 80% of those sums, SVTX and SVTIX would have  
10 paid \$61,907.70 and \$ -0- to creditors/CGS. Instead, but only after CGS filed  
11 its motion to compel payments or receiver/trustee, SVTX paid \$19,500.00  
12 (check dated 10/30/09) to CGS.  
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- 14 (j) for the calendar quarter ending December 2009, SVTX reported Net Income of  
15 (\$43,724.29), and SVTIX reported Net Income of \$63,901.92. -- after included  
16 deduction of three checks dated 12/29/09 -12/30/09 and written to CGS  
17 consisting of an SVTX check for \$58,828.76 (delivered 1/12/10), and SVTIX  
18 checks for \$109,167.03 (delivered 1/12/09), and \$30,163.27 (delivered  
19 1/20/10) to CGS.  
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- 21 (k) for the calendar quarter ending March 2010, SVTX reported Net Income of  
22 (\$42,234.42) and SVTIX reported Net Income of \$245,986.61. If SVTX and  
23 SVTIX had distributed 80% of those sums, SVTX and SVTIX would have  
24 paid \$ -0- and \$196,789.28 to creditors/CGS. Instead, SVTX paid  
25 \$135,810.00 (check dated 4/08/10) to CGS. Subsequently, after objections  
26 raised by CGS and Tilem, SVTX paid an additional \$23,106.67 (check dated  
27 5/19/10) to CGS.  
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- 1 (l) for the calendar quarter ending June 2010, SVTX reported Net Income of  
2 \$52,654.89, and SVTIX reported Net Income of (\$153,549.29). If SVTX and  
3 SVTIX had distributed 80% of those sums, SVTX and SVTIX would have  
4 paid \$42,123.91 and \$ -0- to creditors/CGS. SVTX paid \$13,274.05 (check  
5 dated 7/08/10) to CGS. However, CGS and Tilem advised SVTX that at least  
6 \$21,519.21 was still due and owing, based on SVTX mis-utilization of general  
7 purpose funds for 20% Reserve Account building improvements and repairs,  
8 but SVTX has not paid any additional sum.
- 10 (m) for the calendar quarter ending September 2010, SVTX reported Net Income  
11 of (\$16,256.13), and SVTIX reported Net Income of (\$19,555.51) (amounts  
12 net of non-cash items). If SVTX and SVTIX had distributed 80% of those  
13 sums, SVTX and SVTIX would have paid nothing to creditors/CGS. SVTX  
14 paid \$1,106.51 (check dated 10/10/10) to CGS.
- 16 (n) for the calendar quarter ending December 2010, SVTX reported Net Income of  
17 \$2,342.51, and SVTIX reported Net Income of \$13,806.32 (amounts net of  
18 non-cash items). If SVTX and SVTIX had distributed 80% of those sums,  
19 SVTX and SVTIX would have paid \$1,874.01 and \$11,045.06 to  
20 creditors/CGS. SVTX paid \$5,266.02 (check dated 1/10/11) and SVTIX paid  
21 \$10,003.76 (check dated 1/10/11) to CGS.
- 23 (o) for the calendar quarter ending March 2011, SVTX reported Net Income of  
24 (\$4,503.12), and SVTIX reported Net Income of (\$836.30) (amounts net of  
25 non-cash items). If SVTX and SVTIX had distributed 80% of those sums,  
26 SVTX and SVTIX would have paid nothing to creditors/CGS. SVTX paid  
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1                   \$1,628.40 (check dated 4/2/11) and SVTIX paid \$10,806.34 (check dated  
2                   4/2/11) to CGS.

3                   13.     CGS/Tilem contend that, for the calendar quarter ending December 2008,  
4                   when SVTX reported a Balance Sheet cash balance of (\$48,433.90), and SVTIX reported a  
5                   Balance Sheet cash balance of (\$113,852.82) -- after deducting four checks dated 12/28/08 -  
6                   12/30/08 and written to CGS consisting of SVTX checks for \$15,000.00 (delivered 1/15/09) and  
7                   \$34,000.00 (delivered 1/29/09), and SVTIX checks for \$85,000.00 (delivered 1/15/09), and  
8                   \$85,000.00 (delivered 1/27/09) to CGS -- that the payment checks were written for more funds  
9                   than SVTX and SVTIX actually had available to them at the end of December 2008 and were  
10                  therefore not delivered until mid- or late-January 2009 in order to utilize January 2009 rents to  
11                  cover those checks written. CGS/Tilem contend that SVTX' primary purpose in writing such  
12                  checks was not to comply with SVTX' confirmed Plan obligations but rather to minimize Rubio  
13                  personal taxes.

14                  14.     CGS/Tilem contend that, for the calendar quarter ending December 2009,  
15                  when SVTX reported a Balance Sheet cash balance of \$79,318.49, and SVTIX reported a  
16                  Balance Sheet cash balance of (\$46,324.24) -- after deducting three checks dated 12/29/08 -  
17                  12/30/08 and written to CGS consisting of an SVTX check for \$58,828.76 (delivered 1/12/10),  
18                  and SVTIX checks for \$109,167.03 (delivered 1/12/09), and \$30,163.27 (delivered 1/20/10) to  
19                  CGS -- that the payment checks were written for more funds than SVTX and SVTIX actually  
20                  had available to them at the end of December 2009 and were therefore not delivered until mid- or  
21                  late-January 2010 in order to utilize January 2010 rents to cover those checks written.  
22                  CGS/Tilem contend that SVTX' primary purpose in writing such checks was not to comply with  
23                  SVTX' confirmed Plan obligations but rather to minimize Rubio personal taxes.

1           15.     CGS/Tilem contend that, for the calendar quarter ending June 2010, when  
2 SVTX paid \$13,274.05 (check dated 7/08/10) to CGS, CGS/Tilem advised SVTX that at least  
3 \$21,519.21 was still due and owing, based on SVTX mis-utilization of general purpose funds for  
4 20% Reserve Account building improvements/repairs, but SVTX has not paid any additional  
5 sum.  
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7           16.     SVTX contends that since the commencement of quarterly distributions of  
8 80% of "net profits" beginning with the quarter ending December 2007 through June 30, 2010  
9 (including the 80% distribution on the "Balance Sheet cash balance" made in the first 10 days of  
10 July 2010), SVTX distributed to CGS the entire "Balance Sheet cash balance" except for  
11 \$119.23. In other words, after subtracting all expenses, including expenses paid by check which  
12 have not been presented to SVTX's bank for payment, and the quarterly distribution for the  
13 quarter ending June 30, 2010, SVTX had a remaining balance sheet cash balance of \$119.23.  
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15           17.     SVTX contends that since the commencement of quarterly distributions of  
16 80% of the "net proceeds" beginning with the quarter ending December 2007 through June 30,  
17 2010 (including the 80% distribution of the "Balance Sheet cash balance" made in the first 10  
18 days of July 2010), SVTIX distributed to CGS the entire "Balance Sheet cash balance" except  
19 for \$11,135.58.  
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21           18.     SVTX contends that SVTX and SVTIX did not make any quarterly  
22 distribution to CGS for the calendar quarter ending December 31, 2007 because as of the date for  
23 distribution, CGS had no unpaid, court approved, fee applications. CGS/Tilem contend that the  
24 lack of any CGS-approved fee application did not excuse SVTX performance (either payment to  
25 creditors or sequestering funds) of its obligations under the terms of the confirmed Plan.  
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27           19.     SVTX contends that, for the quarterly distribution for the calendar quarter  
28 ending March 31, 2010, a dispute arose between SVTX and CGS with respect to calculating the

1 amount of the quarterly distribution. Specifically, SVTX maintained that the \$57,120.77 prepaid  
2 rent paid by tenant Verio, Inc. for the rental month of April 2010 that was received in March  
3 2010 was not “net proceeds” and should not be included in the calculation of the distribution  
4 amounts to creditors. CGS/Tilem contend that, consistent with SVTX’ assertion that its Plan  
5 payment obligation was premised upon the “Balance Sheet cash balance” – and the prepaid  
6 Verio rent being part of that total cash balance – SVTX was not permitted to reduce the reported  
7 “Balance Sheet cash balance” to exclude the Verio pre-paid rents. SVTX contends that the two  
8 payments made to CGS for the quarterly distribution for the calendar quarter ending March 31,  
9 2010 totaling \$158,916.67 is the amount CGS agreed was the amount owing for the quarterly  
10 distribution. CGS/Tilem contend that CGS accepted a calculated payment premised upon the  
11 “Balance Sheet cash balance” but excluding the prepaid Verio rent being part of that total cash  
12 balance as a compromise of that issue for that quarterly payment only.

15           20. SVTX contends that after SVTX and SVTIX made the quarterly distribution  
16 for the calendar quarter ending June 30, 2010, CGS questioned SVTX’s \$6,000.00 and SVTIX’s  
17 \$6,000.00 payments to the California Franchise Tax Board, which Plan Proponents explained  
18 were Gross Receipts taxes SVTX and SVTX owed the State of California, to CGS’s satisfaction.  
19 SVTX contends that CGS also claimed that SVTX was manipulating rent since SVTX received a  
20 \$57,117.77 rent payment from a tenant Verio, Inc., on June 21, 2010 and SVTX refunded the  
21 rent payment on June 30, 2010. SVTX contends that Plan Proponents explained to CGS that  
22 Verio, Inc.’s lease terminated June 30, 2010 and that Verio, Inc. mistakenly paid rent for July  
23 2010, for which SVTX refunded the mistaken payment. SVTX contends that after the Verio,  
24 Inc. rent refund was explained to CGS, CGS wanted confirmation that SVTX had in fact sent  
25 Verio, Inc. the refund check. SVTX contends that SVTX confirmed the check had been sent to  
26 Verio, Inc. and SVTX obtained confirmation from Verio, Inc. that Verio, Inc. had in fact

1 received the refund check. CGS/Tilem contend that, despite the foregoing assertions, SVTX  
2 continues to claim that Verio owes (and has not paid) rent to SVTX for June 2009, July 2009,  
3 August 2009 and later months.

4 21. SVTX contends that the Income and Expense Graph exhibit offered by SVTX  
5 is an accurate representation of the combined financial information for SVTX and SVTIX for the  
6 years represented. CGS/Tilem dispute this assertion and contend that the exhibit materially  
7 misrepresents a correct accounting for SVTX/SVTIX financial data consistent with SVTX  
8 obligations under the confirmed Plan.  
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10 22. SVTX contends that the Income and Expense Report exhibit offered by SVTX  
11 is an accurate representation of the combined financial information for SVTX and SVTIX for the  
12 years represented. CGS/Tilem dispute this assertion and contend that the exhibit materially  
13 misrepresents a correct accounting for SVTX/SVTIX financial data consistent with SVTX  
14 obligations under the confirmed Plan.  
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16 23. SVTX contends that the combined SVTX and SVTIX *total incomes* for 2007,  
17 2008, 2009, and the partial year 2010 through 6/30/2010 is \$1,923,979.40, \$2,342,559.40,  
18 \$2,952,675.74, and \$1,383,947.72 for each year, respectively.  
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20 24. SVTX contends that the combined SVTX and SVTIX *gross profit* for 2007,  
21 2008, 2009, and the partial year 2010 through 6/30/2010 is \$826,947.46, \$934,483.83,  
22 \$1,285,414.48, and \$490,177.12 for each year, respectively. CGS/Tilem dispute this assertion  
23 and contend that the exhibit materially misrepresents a correct accounting for SVTX/SVTIX  
24 financial data consistent with SVTX obligations under the confirmed Plan.  
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26 25. SVTX contends that the combined SVTX and SVTIX *net ordinary income* for  
27 2007, 2008, 2009, and the partial year 2010 through 6/30/2010 is \$309,626.54, \$592,637.97,  
28 \$991,603.15, and \$323,661.27, for each year, respectively. CGS/Tilem dispute this assertion and

1 contend that the exhibit materially misrepresents a correct accounting for SVTX/SVTIX  
2 financial data consistent with SVTX obligations under the confirmed Plan.

3 26. SVTX contends that, prior to September 1, 2007, CGS never advised SVTX  
4 that quarterly distributions pursuant to SVTX's Plan of Reorganization should be calculated  
5 based on SVTX and SVTIX's quarterly Profit & Loss statements. CGS/Tilem dispute this  
6 contention.  
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8 27. SVTX contends that, prior to March 31, 2010, CGS never advised SVTX that  
9 quarterly distributions pursuant to SVTX's Plan of Reorganization should be calculated based on  
10 SVTX and SVTIX's quarterly Profit & Loss statements. CGS/Tilem dispute this contention.  
11

12 28. SVTX contends that, at no time prior to March 31, 2010, did CGS ever discuss  
13 with SVTX how to determine "net proceeds" for calculating quarterly distributions pursuant to  
14 SVTX's Plan of Reorganization. CGS/Tilem dispute this contention.

15 29. SVTX contends that, at no time prior to March 31, 2010, did CGS ever discuss  
16 with SVTX which financial report SVTX should use to determine "net proceeds" for calculating  
17 quarterly distributions pursuant to SVTX's Plan of Reorganization. CGS/Tilem dispute this  
18 contention.  
19

20 30. SVTX contends that, CGS had no discussions with SVTX regarding what  
21 SVTX needed to do to perform its obligations under SVTX's Plan of Reorganization.  
22 CGS/Tilem dispute this contention.

23 31. SVTX contends that, at no time prior to March 31, 2010, did CGS ever discuss  
24 with SVTX that SVTX should have a separate accounting line item for the 20% Reserve  
25 Account. CGS/Tilem dispute this contention.  
26  
27  
28



1           32.     SVTX contends that SVTX was under no obligation to retain funds in a 20%  
2 Reserve Account and could distribute all funds to CGS/creditors, at SVTX's sole discretion.  
3 CGS/Tilem dispute this contention.

4           33.     SVTX contends that CGS/Tilem have no facts to support the contention that  
5 SVTX has not distributed all funds to creditors that SVTX has received on account of its claim  
6 in Enron's bankruptcy case. CGS/Tilem dispute this contention.

7           34.     CGS/Tilem contend that the Plan anticipated that all creditors would be paid in  
8 full within three years from Confirmation.

### 10                                   **Motion to Compel Payments**

11           35.     In October 2009, CGS filed a motion to compel SVTX to comply with its  
12 confirmed Chapter 11 reorganization plan or, alternatively, for appointment of a trustee or  
13 receiver. CGS' motion was subsequently joined by Tilem, a creditor of SVTX's creditor  
14 Corporate Builders, Inc., and by Randall Lamb Associates.

15           36.     In May 2010, creditors CGS and Tilem entered into a "payment methodology"  
16 agreement with reorganized debtor SVTX in an attempt to clarify SVTX' compliance obligations  
17 with respect to its Confirmed Plan, which agreement was subsequently rendered as an Order of  
18 this Court.

19           37.     Based on SVTX's immediate subsequent distribution for the calendar quarter  
20 ending June 2010, CGS/Tilem assert that SVTX is not in compliance with the payment  
21 methodology agreement. Among other things, CGS/Tilem contend that SVTX owes at least an  
22 additional \$21,519.21, based on its mis-utilization of general purpose funds for 20% Reserve  
23 Account building improvements and repairs. SVTX contends that \$12,500.00 in identified  
24 charges were not for improvements and as such payment for those expenses is not limited to the  
25 balance held in SVTX's 20% Reserve Account. SVTX contends that of \$53,762.20 in identified  
26  
27  
28

1 charges only the \$22,250.00 cabinet charge and \$9,904.00 PME Electric charges were for  
2 construction of improvements, with the remaining charges for repairs or maintenance. SVTX  
3 contends that \$53,762.20 in identified charges were incurred prior to SVTX and CGS/Tilem  
4 reaching the "payment methodology agreement" or the Court Order approving same.  
5

### 6 **20% Reserve Account**

7 38. SVTX contends that SVTX' 20% Reserve Account balance as of April 1, 2010  
8 was \$39,363.19. CGS/Tilem dispute this contention because that balance fails to reflect the  
9 cumulative effect of SVTX over-spending of such funds from all prior periods, which SVTX had  
10 previously deducted from General Account (i.e. "Creditor") funds.  
11

12 39. SVTX contends that the quarterly maintenance contracts for maintaining  
13 SVTIX's data center equipment is not an amount to be deducted from the 20% Reserve Account.  
14 SVTX contends that the Chase Card reimbursements paid on May 19, 2010, for \$2,590.90 and  
15 \$2,262.25 are for payment to Cal-Gen for a quarterly generator maintenance contract and JT  
16 Packard for a UPS quarterly maintenance contract, respectively. CGS/Tilem dispute this  
17 characterization.  
18

19 40. SVTX contends that the Plan and/or Court Order setting for a methodology for  
20 calculating quarterly distributions does not in any way limit amounts SVTX and/or SVTIX may  
21 spend for maintenance and repairs. CGS/Tilem dispute this characterization.  
22

23 41. SVTX contends that the Plan and/or Court Order setting forth a methodology  
24 for calculating quarterly distributions permit SVTX and/or SVTIX to pay maintenance and/or  
25 repair expenses even when the 20% Reserve Account balance is zero or a negative account  
26 balance. CGS/Tilem dispute this characterization.  
27

28 42. SVTX contends that prior to the July 16, 2010 status conference and as an  
inducement to enter into the agreement regarding a methodology for calculating quarterly

1 distributions, CGS and Tilem agreed to dismiss the Motion to Compel if SVTX made the  
2 quarterly distribution for the quarter ending June 30, 2010 according to the agreed methodology  
3 for calculating quarterly distributions. CGS/Tilem dispute this characterization.  
4

#### 5 **LEGAL ISSUES RAISED**

6 A. Did Plan Proponents correctly calculate the quarterly distribution for the  
7 quarter ending June 30, 2010?

8 B. Are SVTX./SVTIX payments for improvements prior to the agreement  
9 regarding the methodology for calculating quarterly distributions a breach of the agreement and  
10 Order?

11 C. If Plan Proponents did not correctly calculate the quarterly distribution for the  
12 quarter ending June 30, 2010, what remedies are available to creditors?

13 D. Did creditors and CGS waive alleged breaches of the Plan prior to March 31,  
14 2010 as a condition of Plan Proponents entering into the agreement regarding a methodology?

15 E. Is SVTX in breach of its obligations under the Confirmed Plan?

16 F. If so, what remedies are available to creditors in consequence of SVTX'  
17 breach (e.g., money judgment, appointed receiver, case conversion, etc)?  
18

#### 19 **DOCUMENTS TO BE OFFERED AS EXHIBITS**

20  
21 CGS/Tilem will offer the following Exhibits (other than those to be used for  
22 impeachment) all of which have been shown to SVTX or obtained from SVTX:

- 23 1. Third Amended Joint Plan of Reorganization, with Amendment
- 24 2. Disclosure Statement, with Addendum
- 25 3. Order Confirming Joint Plan of Reorganization
- 26 4. Transcript (Confirmation Hearing)
- 27 5. SVTX Quarterly Post-Confirmation Reports (Original and Amended)
- 28 6. SVTIX Balance Sheets, P/L Statements, Check Ledgers and Detail
7. SVTIX Balance Sheets, P/L Statements, Check Ledgers and Detail
8. SVTX/SVTIX Invoices and Charge Card Statements

SVTX will offer the following Exhibits (other than those to be used for impeachment)  
all of which have been shown to CGS/Tilem or obtained from CGS/Tilem:

1. Confirmed Plan of Reorganization
2. Order setting a methodology for calculating quarterly distributions
3. Pinckney 7/6/10 email to Goodsell/Gerston with attachments
4. CGS summary of questioned SVTX/SVTIX expenses from 6/30/10 quarter
5. SVTX response to item (4) above
6. PME Electric invoices paid during 6/30/10 quarter
7. Chase Card monthly statement (redacted) for SVTX payment of 5/19/10
8. Goodsell 7/8/10 email
9. SVTX consolidated balance sheet for quarters ending 12/31/07 - 6/30/10
10. Pinckney/Goodsell/Gerston 5/14/10-5/19/10 emails
11. SVTIX consolidated balance sheet for quarters ending 12/31/07 - 6/30/10
12. Spreadsheet titled SVTX and SVTIX Allocation and Payments
13. Transcript (7/16/10 Court Hearing)
14. Income & Expense Report v.1
15. Income & Expense Graph

**WITNESSES**

CGS/Tilem intend to call the following witnesses (except those to be called for  
impeachment):

1. Fred Rubio - as below
2. Karen Rubio - as below
3. Scott Goodsell - as below, and Plan provisions interpretation

Plan Proponents intend to call the following witnesses (except those to be called for  
impeachment):

1. Fred Rubio - will testify regarding SVTX/SVTIX operations, revenue, expenses (repair, maintenance and improvements) and distributions to creditors and CGS
2. Karen Rubio - will testify regarding SVTX/SVTIX bookkeeping, reporting, US Trustee reports and distributions to creditors and CGS
3. P.M. "Mike" England - will testify work performed for SVTX/SVTIX and invoicing for his work
4. Laurie Orlando - will testify regarding spreadsheet entitled SVTX and SVTIX Allocation and Payments, SVTX/SVTIX books and records, including Balance Sheets and P/L Statements, as well as distribution to creditors and payments to CGS
5. Scott Goodsell - will testify regarding CGS claims with respect to SVTX/SVTIX expenditures for repairs and improvements as well as CGS and creditors agreement to withdraw CGS Motion to Compel

6. Marcia Gerston - will testify regarding CGS and creditors agreement to withdraw CGS Motion to Compel
7. Marc Pinckney - will testify regarding CGS and creditors agreement to withdraw CGS Motion to Compel

DATED: April 26, 2011

CAMPEAU GOODSSELL SMITH

By /s/ Scott L. Goodsell  
 Scott L. Goodsell  
 Attorneys for Creditor CGS

DATED: April 26, 2011

McGRANE GREENFIELD LLP

By /s/ Marcia L. Gerston  
 Marcia L. Gerston  
 Attorneys for Creditor Tilem

DATED: April 26, 2011

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By /s/ Marc L. Pinckney  
 Marc L. Pinckney  
 Attorneys for Reorganized Debtor